No. 12601

In the United States Court of Appeals for the Ninth Circuit

B. M. CRENSHAW, APPELLANT

v.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

BRIEF OF APPELLEE

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STATEMENT OF JURISDICTION

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff below, recovered a judgment against the appellant, defendant below, in the United States District Court for the District of Montana, Helena Division, on February 21, 1950 (R. 17). The Expediter filed his Complaint on June 2, 1948 (R. 1). Answer was filed on July 7, 1948 (R. 6). The Expediter in his Complaint based jurisdiction of the Court below for an injunction and restitution

of rent overcharges, on Section 206 (b) of the Housing and Rent Act of 1947, as amended (50 U. S. C. A. 1881, et seq.) (R. 4).[1] Notice of Appeal was filed on April 21, 1950 (R. 20). Jurisdiction of this Court is invoked pursuant to Section 1291 of the Judicial Code (28 U. S. C. A. 1291).

STATEMENT OF THE CASE

The Expediter in his Complaint alleged that the defendant[2] was a landlord and operator of a certain housing accommodation located at 6 West Babcock in the City of Bozeman, Montana, and that he had violated the Act by serving tenants with 30-day notices of eviction contary to the provisions of the Act (Par. 3, R. 3) and further violated the Act by collecting rents in excess of the legally established maxima (Par. 4, R. 4). The overcharges were set forth in

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[1] Since part of the restitution ordered by the Court below was for overcharges prior to July 1, 1947 (R. 5, 20), the statutory authority for such order must have been Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 925 (a)). The question was never raised in the court below but this Court may take judicial notice of the existence of the Act of 1942 and of Section 1 (b), *infra*, p. 8, and Section 205 (a), *infra*, p. 36.

[2] Jane Doe Crenshaw was also named as a party defendant but was dismissed by stipulation of the parties (R. 28).

letail in Schedule A which was made part of the plaintiff's Complaint.[3]

The defendant's Answer consisted of a general denial (Par. 3, R. 7) and a plea that the defendant

[3] Schedule A reads as follows:

Grenshaw Apartments, 6 West Babcock, Bozeman, Mont.

Name of tenant	Apartment	Period of occupancy	MLR	Amount charged	Amount overcharged per month	Total overcharged	
Maj. L. W. Konecki	14	Nov. 1/47 to and incl. June 1/48.	$45	$75	$30 for 8 mo.	$240	
Mrs. J. M. Ashmore	37	Apr. 6/47 to Mar. 6/48	50	55	$5 for 11 mo.	55	$130
Mrs. J. M. Ashmore	9	Mar. 6/48 to and incl. June 1/48.	50	75	$25 for 3 mo.	75	
Mrs. John R. Durham	1	Sept. 1/47 to Mar. 1/48	50	100	$50 for 6 mo.	300	$440
Mrs. John R. Durham	1	Mar. 1/48 to June 1/48 incl.	50	85	$35 for 4 mo.	140	
Leona Reeves, Clarice Reeves, and Louise Ketter.	24	Apr. 1/48 to and incl. June 1948.	65	75	$10 for 3 mo.	30	
R. H. Henke	17	Sept. 1/47 to and incl. June 1/47.	40	55	$15 for 10 mo.	150	
Victor B. Barkley	8	Apr. 8/48 to June 1/48	50	75	$25 for 2 mo.	50	
Joseph D. O'Neill	20	Jan. 15/48 to June 1/48	50	75	$25 for 5 mo.	125	
Mr. and Mrs. John Vallee	20	June 8/46 to Nov. 28/46	50	75	$25 for 5 mo.	125	
Mr. and Mrs. John Vallee	21	Nov. 29/46 to Aug. 20/47	50	75	$25 for 9 mo.	225	
Mr. and Mrs. John Vallee	16	Aug. 20/47 to June 1/48	55	*75	$20 for 9 mo.	180	
Mr. and Mrs. R. C. Gregar.	21	Mar. 5/48 to June 1/48	50	75	$25 for 3 mo.	75	
Mr. and Mrs. E. A. Wilson.	18	Apr. 15/48 to June 1/48	50	75	$25 for 1½ mo.	37.50	
Mr. and Mrs. Carl Jones	48	Apr. 10/48 to June 1/48	15	11.25 wk.	$7.50 per wk. for 5 wks.	37.50	
Priscilla Larson	36	Nov. 1/47 to June 1/48	40	65 per mo.	$25 for 8 mo.	200.00	
Mr. and Mrs. M. C. Davies.	12	Nov. 1/47 to June 1/48	65	75	$10 for 8 mo.	80.00	

*Except March, paid $55.

was merely an agent "for the Mortgagor and its assigns; * * *" (Par. 2, R. 6).[4]

The appellants demanded a jury trial (Par. 4, R. 7). The record is silent as to the disposition of this Motion, but it must be assumed that it was denied since the case was tried by the Court (Honorable W. D. Murray (D. J.) presiding), without a jury (R. 8).

The trial consisted of the Area Rent Director testifying for the plaintiff as to the maximum rents (R. 34). The defendant admitted the overcharges, but, justified them on the ground that additional services were rendered (R. 89) as more fully set out hereinafter (p. 14 and p. 15). The third witness was one of the defendant's attorneys who testified that no notice was ever received by him, as defendant's agent, prior to the issuance of the orders establishing the maximum rent (R. 154).

The Area Rent Director testified that the rent on Apartment No. 1 was registered at $35.00 per month (R. 37, 38). The maximum rents on the remaining apartments were established by orders dated not later than June 26, 1947.[5] He further testified that he

[4] This defense has not been pursued in this appeal and must therefore, be considered as abandoned (*Leitner* v. *United States*, 184 F. 2d 216 (C. A. 9).

[5] See the following table:

Apartment	Record	Apartment	Record
8	Page 43	18	Page 63
9	" 47	20	" 65
12	" 49	21	" 65
14	" 53	24	" 65
16	" 56	36	" 66
17	" 61	37	" 66
		38	" 66

mailed several orders registered mail, because he had "sent out a proposal of what I was going to do and I didn't get any reply, so I wanted to be sure they were delivered" (R. 69). The letter and the orders were returned unclaimed (R. 70). On cross-examination the Area Rent Director testified that although he received petitions for rent increases based upon the apartment being furnished, preliminary inspection showed they had not in fact been furnished (R. 78). Subsequent investigations were impossible because of threats of bodily violence made by defendant and his attorney (R. 78, 81), which were admitted (R. 132). The Area Rent Director concluded with testimony that the orders showed on their faces that they had been mailed in the usual course of business (R. 86, 87).

The plaintiff called the defendant pursuant to Rule 43 (b) of the Federal Rules of Civil Procedure (28 U. S. C. A. foll. 723 (c)). The defendant testified that although he collected more than the legal maximum rent, he also furnished extra services, which were reasonably worth the added charge (for detailed examination of the foregoing, see *infra,* p. 14 to p. 15).

On cross-examination he stated that he had "received notices through tenants that those prices [$65 and $75] were the prices for the like or same apartments" (R. 105). Therefore, notice that Apartment 24 had been set at $65 per month, led him to believe that all the apartments, "except the three $55's" had been set at $65 (R. 105).[6] He further testified that

[6] The record shows that even if the appellant had believed Apartment 24 and those of like kind, had a maximum rent of $65, he

he was simply the rent collector for "Mr. Charles Bell, who was trustee for the RFC" (R. 107).[7] The balance of his testimony was to the effect that extra services were furnished for the additional rents (R. 123) or that some of the tenants owed him more money than he overcharged (R. 111–117).

At the conclusion of the trial, the Court entered Findings of Fact and Conclusions of Law (R. 8–17). The Court found that there were overcharges on fourteen apartments (Nos. 3 to 30) (R. 8–13).[8] As Conclusions of Law, the Court found that the Expediter was entitled to maintain the action pursuant to Sec-

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still violated the ceiling on that and the others (R. 105), by admittedly collecting $75 per month for "extra services." Further, he saw the orders on Apartments 12 and 20 (R. 110), which had different maximum rents (Compare Apartments 20 and 24, R. 65–66). In addition, the defendant admitted that he knew separate orders were issued for each apartment (R. 147).

[7] As stated above, no appeal has been taken raising the question of agency. In any event, it would have been unfounded since the collector of the rent is liable under the Act. (*Woods* v. *Bobbitt*, 165 F. 2d 673 (C. A. 4); *Woods* v. *Willis*, 171 F. 2d 289 (C. A. 5)); *Bowles* v. *Ruppel*, 157 F. 2d 944 (C. A. 3d.) Furthermore, under direct interrogation by the Court, the appellant admitted that he ran the apartment, he considered it his apartment and that it was his apartment (R. 124).

[8] The Court found overcharges on all of the apartments listed in Schedule A but refused to order restitution to Konecki, Reeves, and Ketter, and Gregar, "tenants whom the Court has found not entitled in equity and good conscience to receive restitution" (R. 18). In lieu thereof, the Court ordered the excess collections to be remitted to the Treasurer of the United States (R. 18).

tion 206 (b) of the Act (No. 1, 2; R. 13, 14) and that restitution should be made to the tenants except Konecki and Reeves (Nos. 7 and 13; R. 14, 16).

On the basis of the foregoing Findings and Conclusions, the Court entered judgment against the defendant in the sum of $1,728.96 and issued an injunction restraining further violations of the Act and regulations (R. 17–19). From that judgment, the defendant appeals (R. 20).

ARGUMENT

I

Neither the Court below nor this Court has jurisdiction to consider the validity of the orders establishing the maximum rent

a. The defendant-appellant in the Court below placed the gravamen of his defense on the ground that the orders purportedly establishing the maximum rent were invalid for failure of the Area Rent Director to give notice prior to issuing them (e. g., R. 85, 157). In this Court his principal basis for error is again the alleged failure of due process (Br. 4–6). All of the orders establishing the maximum rents were issued not later than June 26, 1947 (R. 65). They were, therefore, issued pursuant to the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 901 et seq.). Since this is an enforcement action, the provisions of the Price Control Act are still in ex-

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istence, especially Sections 203 and 204 thereof.[9] *150 E. 47th Corp.* v. *Porter,* 156 F. 2d 541, 544 (E. C. A.); *Standard Kosher Poultry Co.* v. *Clark,* 163 F. 2d 430 (E. C. A.); *Woods* v. *Richman,* 174 F. 2d 614 (C. A. 9th); *Woods* v. *Gochnour,* 177 F. 2d 964 (C. A. 9th). Consequently, the Court below and this Court do not have jurisdiction to consider the validity of the orders. *Woods* v. *Hills,* 334 U. S. 210; *Brooks* v. *Woods,* 181 F. 2d 716, 718 (C. A. 9th); *Woods* v. *Kaye,* 175 F. 2d 886, 888 (C. A. 9th). This Court from the earliest days of price control has held that exclusive jurisdiction to determine the validity of an order lies in the Emergency Court of Appeals, even though the attack is that the order is void on its face. *Rosensweig* v. *United States,* 144 F. 2d 30 (C. A. 9th); *Martini* v. *Porter,* 157 F. 2d 35 (C. A. 9th), cert. denied 330 U. S. 848. This is also true in cases where the claim

[9] Sections 203 (a), 204 (a) and (e) the sections concerned with administrative appeals and judicial review are set forth in full, *infra*, pp. 33–35.

Section 1 (b) of said Act provides as follows:

"Section 1. * * *

"(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense."

is that the order is void *ab initio* for want of procedural due process. *Woods* v. *Bobbitt,* 165 F. 2d 673 (C. A. 4th).

In *Woods* v. *Bobbitt, supra,* the question of lack of notice was directly before the Court. No affidavit of the mailing of the order was made or placed in the file of the Rent Director's office as was required by Rev. Rent Procedural Regulation No. 3 (8 F. R. 14811, amended 9 F. R. 10484, 11 F. R. 14281) which Procedural Regulation was in force and effect at the time the order was issued in this present appeal. The trial court was of the opinion that the order reducing the rent was void since the Rent Director did not proceed in strict accordance with the Procedural Regulation and, therefore, held that under such circumstances it had jurisdiction to consider the validity of the order, and that the exclusive jurisdiction of Section 204 (d) did not attach. On appeal, the Fourth Circuit reversed, holding that Section 204 (d) applies even where the claim is made that the person has been denied due process, or that the order is void *ab initio.* The Court said (165 F. 2d at p. 675):

> It is firmly established that the United States courts have no power to consider the validity of a rent reduction order but that exclusive jurisdiction in respects thereto resides in the Emergency Court of Appeals and the Supreme Court of the United States; and this is true even though the claim is made that the person has been denied due process or that the order is void *ab initio.*

Another case closely in point is *Woods* v. *Hills,* 168 F. 2d 995, after remand from the Supreme Court (see 334 U. S. 210). There, Hills raised a similar contention in his brief before the Court in the following language:

> We deny that the defendant ever received any notice like Exhibit 4 D,[10] and the court asked the counsel if he had such a notice for the northeast second floor apartment and none was produced.

The lower Court had entered judgment for Hills, holding that the burden was on the Administrator to establish the validity of the second order, and that he had failed to introduce proof establishing its validity. The Court of Appeals reversed after certifying questions to the Supreme Court (334 U. S. 210) on the ground that "the District Court was and is without jurisdiction to determine the validity of the second rent order * * *."

Accord, *Roupp* v. *Woods,* 176 F. 2d 544 (C. A. 10th).

In *Woods* v. *Kaye, supra,* the appellant, defendant below, had successfully challenged a retroactive order in the District Court, on the ground that she had properly registered within 30 days of first renting. The Area Rent Office had issued an order retroactively and ordered refund. In reversing the lower court this Court said, at p. 889:

> * * * The failure of the landlord to properly follow the procedure of review provided,

[10] This was a notice of intention to reduce rentals.

> results in a bar to contesting the enforcement action in the District Court. If this were not so, the purpose of Congress in providing the method of protest and in placing sole jurisdiction in the Emergency Court in order to facilitate and expedite its rent policy, would be manifestly weakened. It is our conclusion that the District Court does not have jurisdiction to inquire into that which could have and should have been appealed to the Emergency Court of Appeals.

Thus, it is abundantly clear that the unsuccessful attack upon the orders in the lower court in the instant case, should be affirmed.

b. Without in any way conceding that the foregoing is not applicable to the case at bar, it is appropriate to inform this Court as to the contents of the record on the question of notice. The record shows that some orders had been mailed out registered mail to the appellant (R. 68) but that the envelope and its contents were returned to the Area Office unclaimed (Plaintiff's Exhibit 10–R. 70). Furthermore, the defendant admitted under examination by his own counsel that he had seen the orders on Apartments 12, 20 and 24 but that he made no inquiry as to the existence of any other orders (R. 110). He told the Court that he knew that separate orders were issued for each apartment (R. 147). In addition, the Court below was convinced that he had full notice of the issuance of the orders.

> The Court. It is a matter of inference, surely, but the Court is not supposed to be

> blind and dumb. I am supposed to find out all the facts of this case. Now, he has testified he did know about the orders. He knew there were orders; he knew that the Rent Director issued orders, and he knew that the tenants got copies of the orders. Now, he says that—and your contention is that—having heard and seen the order in one case, he just proceeded in the same way with reference to the other apartments because he thought they must be all the same. That is a question for the Court to consider, whether that is reasonable or not, or whether it would be more reasonable for him, knowing there were other orders, knowing each apartment was handled separately, to inquire as to the other orders (R. 121–122).

In view of the above record of the trial, it cannot be said the judgment rendered by the Court below was not based upon substantial evidence. The judgment therefore should be affirmed. Rule 52 (a) of the Federal Rules of Civil Procedure (28 U. S. C. A., foll. 723 (c); *Roos* v. *Woods,* 170 F. 2d 1023 (C. A. 9).

II

The findings of the Court below are supported by substantial evidence; they are not clearly erroneous, and, therefore, should not be disturbed

The Court below entered Findings of Fact (R. 8), covering each apartment, the name of the tenant occupying, the period occupied, the amount of rent collected, and the maximum rent of each (Nos. 3 to 30, R. 9–13). These Findings, as shown hereinafter are supported by substantial evidence, and since they

are not clearly erroneous, should be affirmed. Rule 52 (a) of the Federal Rules of Civil Procedure (28 U. S. C. A. foll. 723 (c)).

That rule provides in part:

> * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

In applying the above rule this Court has repeatedly held that where a finding is not clearly erroneous it is "obliged to accept it" (*Coffin-Redington Co.* v. *Porter,* 156 F. 2d 113 (C. A. 9); *Columbian National Life Insurance Co.* v. *A. Quandt & Sons,* 154 F. 2d 1006 (C. A. 9th); *Wingate* v. *Bercut,* 146 F. 2d 725 (C. A. 9th); *Goldstein* v. *Polakof,* 135 F. 2d 45 (C. A. 9th); *Cherry-Burrell Co.* v. *Thatcher,* 107 F. 2d 65 (C. A. 9th); *Lumberman's Mutual Casualty Co.* v. *McIver,* 110 F. 2d 323 (C. A. 9th)).

In the *Coffin-Redington* case, *supra,* this Court after viewing the entire Record sustained the finding of the trial court that the defendants violated the Emergency Price Control Act by a tie-in sale of liquors, stating at p. 114:

> The trial court observed their conduct and demeanor while on the stand, and was in better position than we to appraise the situation and to draw inferences. We are not able to say that the finding in question was clearly erroneous and are therefore obliged to accept it. *Columbian National Life Ins. Co.* v. *A. Quandt & Sons,* 9 Cir., 154 F. 2d 1006.

Here, the plaintiff called the defendant as part of his case in chief (R. 89), who testified concerning his rent operations, as follows:

1. As to Apartment No. 1, Mrs. John Durham occupied it from September 1, 1947, to June 1, 1948 (R. 90), and paid "$50 every two weeks," for awhile, and then collected "$42.50 every two weeks" (R. 91).[11]

2. As to Apartment No. 8, he admitted he collected $75 per month while Victor B. Barkley occupied it (R. 93).[12]

3. As to Apartment No. 9, Mrs. J. M. Ashmore admittedly occupied it from March 6, 1948, to June 1, 1948, and defendant charged her $75 per month. "I had to put a baby crib in there" (R. 95).

4. As to Apartment No. 12, he admitted renting to Mr. and Mrs. M. C. Davies from June 1, 1947, to June 1, 1948 (R. 95), and charged them $75 per month (R. 96).

5. As to Apartment No. 14, he admitted Major L. W. Konecki occupied it from November 1, 1947, to June 1, 1948, and that he collected $75 per month for that period (R. 96).

6. As to Apartment No. 16, he admitted Mr. and Mrs. John Vallee occupied it from August 20, 1947, to June 1, 1948, and collected $75 for the term, except for the month of March (R. 97).

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[11] The defendant denied in his answers to the requests for admissions that he collected $100 per month and $85 per month. He admitted on the stand, however, that the denial was based upon a bimonthly collection of half those amounts (R. 92).

[12] His denial of collecting $75 per month in his answer to requests for admissions was not to the amount, but to the fact that part was rent and part was for "extra service" (R. 93).

7. As to Apartment 17, R. H. Henke admittedly occupied it from September 1, 1947, to June 1, 1948, and paid $55 per month for the entire term (R. 98).

8. As to Apartment 18, he admitted Mr. and Mrs. E. A. Wilson occupied it from April 15, 1948, to June 1, 1948, and paid $75 per month (R. 99).

9. As to Apartment 20, admittedly Joseph D. O'Neill occupied it from January 15, 1948, to June 1, 1948 (R. 99), and the defendant collected $75 per month (R. 100)[13]

10. As to Apartment 21, he admitted that Mr. and Mrs. John Vallee occupied it from November 1946 to August 20, 1947, and collected $75, but "Some of that charge was for the extra bed" (R. 100).

11. As to Apartment 24, there was admittedly an overcharge of $30 (R. 102), but the Court refused to order restitution, as against "equity and good conscience" (R. 18).

12. As to Apartment 36, he admitted Priscilla Larson occupied it from November 1, 1947, to June 1, 1948. (R. 103).

13. As to Apartment 37, admittedly Mrs. J. M. Ashmore occupied it from April 6, 1947, to March 6, 1948 (R. 103), and collected $55 per month (R. 104).

14. As to Apartment 48, he admitted Mr. and Mrs.

[13] In his brief, appellant claims that the rent had been set by order at $75.00 per month (Br. 9). This is partially true, but immaterial to the order of restitution of $112.50 (R. 18). The parties stipulated that the official records of the Area Office would show that "on June 26, 1947, the rent director made an order reducing the rent from $75 to $50 per month furnished" (R. 65). The defendant admitted O'Neill paid $75 a month for four and a half months, or $112.50 over the ceiling.

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Carl Jones occupied it from April 10, 1948, to June 1, 1948 (R. 104), and collected $11.25 per week (R. 104). All of the foregoing overcharges were by defendant's own admission, knowingly and deliberately made (R. 105).

Thus, the record is unequivocal that the defendant collected more than the legal maximum rent from the tenants in question. But, even assuming, arguendo, that a conflict of evidence did exist in the record, the Court below had the opportunity to observe the witnesses, and weigh each one's statements upon the basis of all factors before it, so due weight must be given to the findings based upon those factors.

This Court stated the rule to be as follows, in *Columbia National Life Insurance Company* v. *A. Quandt & Sons,* 154 F. 2d 1006:

> Where there is a conflict in the evidence, this court must keep in mind that the trial judge who hears and sees the witnesses has a better opportunity to appraise their credibility and judge the weight to be attached to their testimony. We cannot say that the finding of the lower court was clearly erroneous. It is the rule that the findings of the trial court are to be accepted on appeal unless clearly wrong.

In view of the foregoing, it cannot be seriously contended that the defendant was ignorant of the matters pertaining to the operation of his apartment building with regard to the establishment of maximum rents, and, the district court was fully justify in finding that he had violated the Act and Regulation. Consequently, the judgment should be affirmed.

III

Consideration of appellant's arguments

The appellant has raised several issues to which a brief answer should suffice. These matters are answered in the order in which they occur in appellant's brief, and not in the order of his Specifications of Error, to which reference will be made. The contentions are:

1. The appellant maintains that he is entitled to "any reasonable agreed amount" for extra services or furnishings, "at the tenant's special request" (Br. 6; Spec. of Error 4, Br. 10).

2. The appellant should not be held liable for restitution of rent overcharges to a tenant who owes him money (Br. 6; Spec. of Error 3, Br. 10).

3. The Court below erred in not applying equitable maxims[14] and thus entering judgment for the defendant (Br. 8). (This was not a Specification of Error.)

4. Apartment 48 was rented on a weekly basis "and is not under rent control," therefore, that portion of the judgment should be reversed (Br. 8–9; Spec. of Error 2, Br. 9).

5. The trial court erred as a matter of arithmetic (Br. 8; Spec. of Error 1, Br. 9).

6. The order of payment to the Treasurer of the United States was unauthorized (Br. 9, not specified as error).

These contentions will be discussed in order.

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[14] "He who seeks equity must do equity." And, "Equity is equality."

1. *Appellant is not entitled to a reasonable amount for extra services.*

The appellant claims error in entering the judgment on the ground "that every claimed overcharge was fully explained under the appellant's right to believe that he had a right * * * to charge the amount he testified he charged plus the agreed addition for services, furniture, storage, and the like, furnished at the request and instance of the tenant" (Br. 9). He placed strong reliance in his testimony on the kind of services furnished (e. g., R. 95). But his attitude toward the problem of complying with the law on rent increases is best expressed in his own words (R. 125–27):

> Q. Did you change any rents after you were up to see Mr. Bunker?
>
> A. I change them every day.
>
> Q. You change them every day without regard to what they might be down at the Office of the Housing Expediter.
>
> Mr. BUNKER. Objected to.
>
> The COURT. Overruled. Answer the question. Do you change the rents whenever you feel like it?
>
> The WITNESS. Yes.
>
> The COURT. Without regard to the Rent Control Office?
>
> The WITNESS. They wouldn't give me any cooperation.
>
> The COURT. Do you change your rents without any consideration of what the Rent Director might do?
>
> The WITNESS. I take his $65.

The COURT. And charge whatever you want to?

The WITNESS. No; not whatever I want to. If I charged what I wanted to, it would be $100 to break even on the investment.

The COURT. Do you fix the rents without regard to what the Rent Director fixes them at?

The WITNESS. No, sir. He fixed them at $65. I figure I have the right according to law to charge 15% more.

The COURT. Fifteen percent more than the Rent Director fixed?

The WITNESS. That is one reason.

The COURT. You think you have the right to charge 15% more than what the Rent Director fixes?

The WITNESS. Yes.

The COURT. What is the other reason?

The WITNESS. Service.

The COURT. Any other reasons?

The WITNESS. Furniture and service.

The COURT. Furniture and service and you have the right to charge 15% more than the rent director fixes the rent at?

The WITNESS. Yes, sir.

Q. (By Mr. KNOWLTON.) You never entered into any leases in connection with the apartments?

A. No leases on the apartments." [15]

It is obvious that such a defiant approach quickly and easily nullifies effective rent control. However, the Act, the regulations, and the reported decisions

[15] The 1947 Act and its 1948 amendment permitted collection of 115% of the legal maximum rent, if a voluntary written lease was entered into specifying certain conditions. There is no evidence that any such leases were offered to the tenants, or entered into.

are decidedly opposed to such an attitude. Section 206 (a) of the Act[16] forbids the collection of rent in excess of the maximum established by it, or any regulation,[17] or order, of the Expediter. In addition, the regulation specifically authorizes a landlord to obtain rent increases in an orderly, legal manner with the prior approval of the Expediter. Concomitantly, it provides an effective measure of protection to the tenant from unjustified and unnecessarily burdensome increases.[18] The wisdom of this provision has been recognized and applied by several Courts of Appeal.

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[16] That section reads as follows:

"SEC. 206 (a). It shall be unlawful for any person to demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under Section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing."

[17] Section 2 (a) of the Regulation provides:

"(a) *General prohibition.* Regardless of any contract, agreement, or lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of §§ 825.1 to 825.12, inclusive, of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by §§ 825.1 to 825.12, inclusive; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the services, furniture, furnishings, or equipment required under § 825.3 shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by §§ 825.1 to 825.12, inclusive, may be demanded or received."

[18] Section 5 (a) (3) of the Regulation says:

"(a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable only on the grounds that: * * *

"(3) *Substantial increase in space, services, furniture, furnishings or equipment.* There has been a substantial increase in the

In *Creedon* v. *Olinger,* 170 F. 2d 895 (C. A. 5th), the District Court denied recovery for overcharges "for the reason that refrigerators had been furnished by some of the tenants, air-conditioning had been made possible by the defendant to others, and at times during the period in question relatives and friends had visited certain of the tenants and during the visit occupied apartments with them" (id. p. 879). The District court held that:

> "It is the business of the courts to try to discover the just way and from an impartial attitude to see where the right is." (id.)

In reversing that decision the Court of Appeals held that the landlord's relief was in the administrative procedure provided, and not in the courts. The Court then concluded:

> Since the undisputed evidence clearly discloses overcharges during the period alleged in the complaint, judgment for at least the amount of the overcharges must be granted in

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services, furniture, furnishings, or equipment provided with the housing accommodations since the date or order determining its maximum rent or a substantial increase in the living space since June 30, 1947, but before April 1, 1948. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in living space, services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided*, That an adjustment may be ordered, although the tenant refuses to consent to the increase in living space, services, furniture, furnishings or equipment, if the Expediter finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part or (ii) is necessary for the preservation or maintenance of the accommodations."

> favor of the Expediter or, by way of restitution, to the tenant. (id.)

A more exaggerated case came before the Court of Appeals for the First Circuit in *Elma Realty Co.* v. *Woods,* 169 F. 2d 172. There the appellant's building was burned in part, rendering it unfit for human habitation. The Area Rent Director reduced the rent to $1.00 per week "due to substantial deterioration," but informed the appellant that it would increase the rent when made habitable again. On June 6, 1947, after rehabilitation of the premises, the rents were adjusted upward. However, the appellant had been collecting increased rent from the previous April without authorization. This collection constituted the overcharge. In upholding the trial court's judgment of restitution and double damages, the Court said, at p. 174:

> * * * Thus, although the appellant was undoubtedly entitled to an upward adjustment of its maximum rents after its apartments were again habitable, nevertheless, the regulations do not permit it to increase its rents until after it has applied for and obtained permission to do so. *Thierry* v. *Gilbert,* 1 Cir., 147 F. 2d 603.

In an analogous case a prior decision of this Court supports the reasoning of the foregoing cases. The appellant, in *Fontes* v. *Porter,* 156 F. 2d 956 (C. A. 9th) sold a rebuilt lathe with an oral guarantee, at a maximum price established for a used lathe with a written guarantee. After the sale he repaired it within the terms of the guarantee. Nevertheless, action was brought against him for damages for the

difference in price between used machine tools with and without a written guarantee. The District Court entered a judgment for damages for the violation. In this Court, the appellant argued that he did in fact comply with the regulation, and, therefore, the spirit rather than the letter of the regulation should apply. In affirming the judgment, the Court, speaking through Judge Healy, said, at p. 958:

> * * * Neither of these requirements was met by appellant. In the absence of compliance he was not entitled to take advantage of the price permitted for rebuilt and guaranteed tools. A holding otherwise would encourage equivocation and evasion.

The principle in issue here is more extreme in that the appellant not only did not comply with the regulation in spirit, but violated it in the letter. Consequently, the judgment should be affirmed.

2. *The court below properly refused to give effect to counterclaims asserted by appellant at the time of trial.*

(a) In his brief appellant claims error in that the Court below ordered restitution of $41.50 to Victor B. Barkley, who is alleged to owe $100.00 (Br. 8);[19] and, that the order of restitution of $190.80 to J. M. Ashmore is error because "the amount due the appellant is $385.00 for fourteen months * * *" (Br. 8–9). The claims asserted here are bald statements of indebtedness unsupported in fact, and ob-

[19] The actual language of the brief says that "* * * from note 1 it apears that Victor B. Barkley owes $100.00 * * *." Note 1 (Br. 8) does not indicate nor prove that anyone owes anything to anyone else.

viously not believed by the Court below. With reference to the former claim of $100 the Court expressed disbelief.

> The COURT. He did pay $75 a month as rent for the apartment? [90.]
>
> The WITNESS. He owes me $100 yet, your Honor.
>
> The COURT. You charged him $75 a month for the apartment?
>
> The WITNESS. Yes; with extra service.
>
> The COURT. I don't see why we want to quibble about these things. The court is here to do justice. Let's not quibble about it, let's get down to business and tell the truth right from the start. * * * (R. 94.)

Admitting to collection of excess rentals from the tenant Ashmore, the appellant said, "I must have collected about half of it. She owes me $385 now" (R. 104). However, since his answer did not plead the indebtedness and since he offered no proof, the Court below cannot be said to have erred in rejecting that gratuitous statement.

(*b*) The appellant's failure to obtain relief against the two tenants who allegedly owed him money was evidently the direct result of his own negligence. The record is silent that the appellant made any attempt in any stage of the action in the Court below to bring the tenants in as third parties-defendants for the purpose of asserting any counterclaim against them. The appellant could have made the tenants, Barkley and Ashmore, parties and permitted the Court to dispose of all claims arising out of this action. The Federal Rules of Civil Procedure provide

the means of extending the Court's jurisdiction to the appellant's claims against the tenants in circumstances such as these (Rules 13 (h), 14 (a), and 19 (b), 28 U. S. C. A., foll. 723 (c)).[20]

In a case previously decided, a similar claim was made and was dismissed by the Court of Appeals for the Fifth Circuit on the ground that if the defendants fail to avail themselves of the provisions of the Federal Rules of Civil Procedure in the District Court they are estopped in the Court of Appeals from claiming injury by reason of such failure. In *Coefficient Foundation* v. *Woods,* 171 F. 2d 691, the Court said at pages 694–695:

> This action for restitution was brought under 205 (a) and being an equitable proceeding [citations], the trial court, in the exercise of its equity powers, could have required the tenants to be made parties upon the timely request of one of the parties or sua sponte. Defendants filed no counterclaim seeking either an outright recovery or an offset against the tenants and took no steps under Rules 13 and 14, F. R. C. P., to bring the tenants in as parties, or to have them brought, but instead sought to defeat the action on the ground of the absence of the tenants as parties.
>
> Counterclaim, set-off, recoupment, and the like are in the nature of affirmative remedies which the defendant has the burden of pleading and proving, and the trial Court will not be put in error for appellants' own omissions, or for failing to do that which they did not timely request. It is true that the trial Court may, of

[20] These sections are set forth in full, *infra*, p. 38.

its own motion, bring in the tenants if it deems same necessary to do complete justice under Section 205 (a). See *Porter* v. *Warner Holding Company,* 328 U. S. 395, 66 S. Ct. 1086, 90 L. Ed. 1332; *Woods* v. *Selber,* 5 Cir., 171 F. 2d 900; Rule 13 (h), F. R. C. P. But in the absence of the filing of a counterclaim or offset, or the laying of some other appropriate predicate, and in the absence of a timely motion or request to the trial Court by the defendants to bring the tenants in, the Court will not be put in error for failing to anticipate that during the course of the trial the defendants might undertake to show that some of the tenants were indebted to one or the other of them."

See, too, *Woods* v. *McCoy,* 177 F. 2d 355, 356 (C. A. 4th).

Any injury, therefore, that the appellant may have suffered by reason of his failure to assert his counterclaim is the result of his own negligence.

3. *There is no merit in the contention that the Court below failed to apply equitable maxims.*

In his brief the appellant cites two equitable maxims (Br. 8) evidently in support of his contention that the judgment of the Court below was in error.

It should be noted that the right of the United States and its agencies to an injunction provided by statute stands on a footing different from the rights of private parties to an injunction. In such case as was said in *Hecht Company* v. *Bowles,* 321 U. S. 321 "* * * the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief." The statutory

injunction, unlike the injunction granted to protect private interests, is to carry out congressional policy and vindicate public rights. Commonly it is furnished where equitable jurisprudence would not necessarily have afforded relief (cf. *American Fruit Growers* v. *United States,* 105 F. 2d 722, 725 (C. C. A. 9th, 1939); *Securities and Exchange Commission* v. *Jones,* 85 F. 2d 17 (C. C. A. 2d, 1936) cert. denied 299 U. S. 581; *United States* v. *Adler's Creamery Company,* 110 F. 2d 482 (C. C. A. 2d, 1940) cert. denied 311 U. S. 657). The statutory injunction, in other words, "does not call for a balance of equities or for the invocation of generalities of judicial maxims" in order to determine whether an injunction should issue (*United States* v. *San Francisco,* 310 U. S. 16, 30). The Supreme Court in the *San Francisco* case then concluded that, as here, a declared policy of Congress cannot be nullified by the citation of equitable maxims.

> * * * The equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective. Injunction to prohibit continued use—in violation of that policy—of property granted by the United States, and to enforce the grantee's covenants, is both appropriate and necessary. (310 U. S. at p. 31.)

4. *The contention that premises rented on a weekly basis are exempt from control is without foundation.*

Little time need be spent in considering appellant's contention "that rentals by the week are not under the rent controls, i. e., that only bimonthly, monthly,

and upwards are under the rent control as they pertain to housing accommodations'' (Br. 7). Significantly, the foregoing is a gratuitous conclusion without citation of authority. Indeed, the authority is to the contrary.

All rentals, including transient rentals were expressly controlled under the Emergency Price Control Act of 1942, as amended (cf. Section 1 (b), 50 U. S. C. A. 901 (b)). The statement of appellant as applied to the rental of his premises prior to June 30, 1947, is patently contrary to the Act.

In enacting the Housing and Rent Act of 1947 (50 U. S. C. A. 1881, et seq.), the Congress exempted certain accommodations from control (cf. Section 202 (c) (3), *infra,* p. 36), but did not exempt housing accommodations rented ''by the week''. The regulation issued pursuant to said Act (12 F. R. 4331) defined ''controlled housing accommodations'' as ''any housing accommodation in any defense-rental area which is not specifically exempt from control or decontrol under this regulation.'' Section 1 (b) of that regulation exempts many accommodations,[21] but not accommodations rented ''by the week''. Rooms in rooming houses are exempt because they are covered by their own regulation (12 F. R. 4302). That regulation defines ''term of occupancy'' to mean ''occupancy on a daily, weekly or monthly basis'' (Section 825.101). In addition the housing regulation provides that the maximum rent for a housing accommodation

[21] Some of these exemptions are: (1) Farming tenants, (2) service employees, (3) rooms in rooming houses, (4) resort housing, etc.

rented on the maximum rent date, is the rent collected on that date, without regard to whether it was rented "by the week". [22]

Furthermore, this Court has decided cases in which the question of the overcharge turned upon a determination of whether the premises were rented on a daily or a weekly rate, or a daily and a monthly rate. *Wilcox* v. *Woods,* 181 F. 2d 1012 (C. A. 9th); *Roos* v. *Woods, supra.* Thus, the contention of the appellant is clearly without merit.

5. *All computations of the amount of restitution, either are correct or favor appellant.*

The appellant claims a miscalculation in the amounts of restitution to John R. Durham, Victor B. Barkley, J. M. Ashmore, and Carl Jones (Br. 8). However, an examination of the record discloses that the first was correct, and the latter two were less than the proof indicated they should be.

Appellant claims error as to the amount of restitution on apartment No. 1 (Br. 8). Schedule A listed the overcharges at $440 (R. 5). The order of restitution is for $480 (R. 18). The defendant admitted renting apartment 1 to Mrs. John Durham from September 1, 1947, to June 1, 1948 (R. 90). He also admitted collecting "$50 every two weeks" (R. 90) for part of the term and "$42.50 every two weeks" for the balance (R. 91). The Court found as a fact

[22] Section 4 (a) reads as follows:

"Section 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:

"(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date."

that the collections for two months were at the rate of $100; and, $85 per month for seven months (No. 3—R. 9). The findings as to the maximum rent was $35 per month (No. 4—R. 9). The overcharges, therefore, were $130 for the first two months, and $350 for the last seven months, or $480.

On Apartment 8, Crenshaw admitted Barkley occupied it from March 8 to June 1 (R. 92), and that he paid $75.00 per month (R. 93). The legal rent is $50 (R. 41). This totals 1 and $^{11}/_{15}$ months or an overcharge for March of $38.34, and an overcharge for May of $25, or $53.34.

Mrs. Ashmore admittedly occupied Apartment 9 from March 6, 1948, to June 1, 1948 (R. 94–95), for which she paid $75.00 per month (R. 95). The legal rent was $50 (R. 5, 47). The total for $3^{5}/_{6}$ months is $75.50. On Apartment 37, she occupied from April 6, 1947, to March 6, 1948 (R. 102), for which she paid $55 per month (R. 104). The legal rent was $40 per month (R. 66), or an overcharge of $165. The two total $240.50.

Carl Jones occupied Apartment 48 from April 10, 1948, to June 1, 1948, at a rate of $11.25 per week (No. 29, R. 13). The maximum rent was $15.00 per month (No. 30, R. 13). This was an overcharge of $7.50 per week for seven weeks, or $52.50.

The appellant's claim of error in calculation is clearly contrary to the record.

6. *The Court properly ordered appellant to pay the overcharges to the Treasurer of the United States.*

As stated above the purpose of this suit was in the public interest to enforce compliance with the policy

stated by the Congress. *Porter* v. *Warner Holding Co.,* 328 U. S. 395; *Woods* v. *McCord,* 175 F. 2d 919 (C. A. 9th). Having invoked the aid of equity, the Expediter was entitled to an order taking all profit out of appellant's wrongdoing. "* * * courts of equity are free to act under Section 205 (a) in such a way as to be most responsive to the statutory policy of preventing inflation" (328 U. S. at p. 401).

Nor is there any specific restriction upon the court's jurisdiction or the form of its order in order to carry out the intent of the Act. "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case." *Hecht Co.* v. *Bowles,* 328 U. S. 321, 329. The Court below was justified in depriving the appellant of his illegal profits, even though it found it would be inequitable to order a refund to a tenant who perversely refused to assist the court in determining the issue. An order of payment to the Treasurer of the United States was within the authority of the Court "to mould each decree to the necessities of the particular case." Moreover, "(t)here is nothing novel about a regulatory scheme whereby landlords who violate the law are denied the right to profit thereby" (Frankfurter, J. in *Woods* v. *Stone,* 333 U. S. 472, 479). So, in the highest traditions of equity, a court has jurisdiction in carrying out Congressional intent, to take the profit out of wrongdoing. The Court below properly ordered the excess rent collections paid into the Treasury of the United States.

CONCLUSION

It is respectfully submitted that the judgment below was correct and should be affirmed.

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APPENDIX

Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 901 et seq.):

SEC. 203. (a) At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Ap-

peals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or

price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

SEC. 204. * * *

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 of this Act or section 37 of the Criminal Code, involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any pro-

ceeding instituted in accordance with this subsection.

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Housing and Rent Act of 1947 (50 U. S. C. A. 1881, et seq.):

SEC. 202. As used in this title—

* * * * *

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

* * * * *

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members

of the immediate family of the occupant) as housing accommodations.

Housing and Rent Act of 1947, as amended (50 U. S. C. A. 1881, et seq.):

SEC. 204. * * *

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

Controlled Housing Rent Regulation (12 F. R. 4331):

Sec. 1, par. (b)

(b) *Decontrolled and exempted housing to which §§ 825.1 to 825.12 do not apply*—(1) *Exempted housing.* Sections 825.1 to 825.12 do not apply to the following:

(i) *Farming tenants.* Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon.

(ii) *Service employees.* Dwelling space occupied by domestic servants, caretakers, managers, or other employees to whom the space is provided as part or all of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part.

(iii) *Accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.* Rooms or other housing accommodations subject to the provisions of Subpart B.

(iv) *Structures subject to underlying leases.* (*a*) Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee or other tenant of

such entire structure or premises, except as provided in (*c*) of this subdivision (iv).

Federal Rules of Civil Procedure (28 U. S. C. A. foll. 723c):

Rule 13. Counterclaim and cross-claim.

(h) *Additional parties may be brought in.*

When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action.

Rule 14 (a) *When Defendant May Bring in Third Party.*

Before the service of his answer a defendant may move *ex parte* or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. * * *

Rule 19. Necessary Joinder of Parties.

(b) *Effect of Failure to Join.*

When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. * * *

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